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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/553,452	04/19/2000	Earl D. Koch	P3094	3887

23452 7590 12/02/2004

PATENT DEPARTMENT  
LARKIN, HOFFMAN, DALY & LINDGREN, LTD.  
1500 WELLS FARGO PLAZA  
7900 XERXES AVENUE SOUTH  
BLOOMINGTON, MN 55431

EXAMINER

BEACH, THOMAS A

ART UNIT	PAPER NUMBER
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3671

DATE MAILED: 12/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/553,452

Applicant(s)

KOCH, EARL D. 

Examiner

Thomas A Beach

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on amendment filed 08/17/04.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 25-37, 39 and 42-48 is/are pending in the application.
- 4a) Of the above claim(s) 28, 31, 33, 37 and 42-48 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 25-27, 29, 30, 32, 35, 36 and 39 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Objections***

1. Applicant is advised that they have used improper status identifiers, (Withdrawn) or (Currently Amended) may be used, not (Withdrawn - currently amended). It is further noted that the withdrawn claims have not been considered although applicant has apparently amended these withdrawn claims and the election without traverse in response to the restriction has been previously made final.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 25, 32, and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over McGinnis 4,917,531 in view of Rech 4,373,306. McGinnis shows a temporary ramp 24 adapted for use on roadways under construction (figs 1-2) and being placed adjacent to an elevated obstruction (12) located in the roadway having an assembly that creates a ramp that includes an lower surface which contacts the roadway when installed (fig. 4; an upper inclined surface that inclines downwardly from a first edge to a second (fig 4); and opposing side edges (30) where in use the ramp is positionable adjacent the obstruction located in the roadway for allowing vehicles traveling the

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roadway to ride up and over the elevated obstruction. McGinnis does not show a plurality of segments the interlock with one and other to form the ramp, each sharing the same slope with openings (formed to receive clips 28) to removably secure the ramp (claim 35). However, Rech show temporary ramp for use on a from of a roadway having an assembly of a plurality of individual, adjacently disposed, removably interlocking first ramp segments that include an lower surface which contacts the roadway when installed (4, figure 1); an upper inclined surface that inclines downwardly from a first edge to a second; and opposing side edges (6/7) having complimentary coupling formations for adapted to removably interlock with another side edge where in use the first ramp segment. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify McGinnis, as taught by Rech, to include interlocking segments to provide means to rearrange elements to different requirements such as varying obstruction sizes and shapes (Rech; col. 1, lines 24-30).

As concerns claim 32, the combination shows the first ramp segments made of an elastomeric material (Rech; col. 1, lines 15-20) and as concerns claim 35, the combination shows the first segments having opening for receiving fasteners to secure the segments (Rech; 6, 7).

4. Claims 26 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over McGinnis 4,917,531 and Rech 4,373,306 in view of Barnowski 5,535,470. The combination does not disclose the specific ramp slope of at least approximately 1:20; however, Barnowski discloses that such a slope, 1:12 to 1:20, is "conventional" and thus notoriously well known in the art (col. 1, lines 44-46). Therefore, it would have been

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obvious to one of ordinary skill in the art at the time the invention was made to modify Rech or Herman, as taught by Barnowski, to include a common conventional slope of 1:20 to provide a ramped angle this is functionally tested over time as being proper to elevate a vehicle over an obstruction.

As concerns claim 27, the combination shows (in figures 1-4 of McGinnis and figure 1 of Rech) the segments capable of transitioning a linear obstruction since the segments are also shown to be rectangular.

5. Claims 29, 30, 36 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over McGinnis 4,917,531 and Rech 4,373,306 and Barnowski 5,535,470 in view of Haskins 5,535,470. As concerns claim 29, the combination shows, as noted in the rejection of claims 25 & 26, a plurality of second ramp segments (element 1 of Rech) both having lower surface and an upper inclined surface that inclines downwardly from a first edge to a second where adjacent segments share a similar height; and opposing side edges having complimentary coupling formations for adapted to removably interlock with another side edge where in use the first ramp segment are positionable adjacent the obstruction located in the roadway for allowing vehicles traveling the roadway to ride up and over the elevated obstruction. Furthermore, the combination above does show a first segment having a slope of 1:20, but does not show first and second segment both having a slope of at least approximately 1:20. Haskins shows a similar plurality of segments that make up a ramp for roadway use having first and second segments 4, 5, 6, and 7 sharing a slope (Figures 5-8 and 10-13). Therefore, it would have been obvious to one of ordinary skill in the art at the time

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the invention was made to modify the combination, as taught by Haskins, to include first and second segment of the slope segment to reduce size and transportation costs of large segments while maintaining a study ramp (Haskins; col. 2, lines 29-46).

As concerns claim 30, the combination shows a linear surface and rectangular segments (figure 1 of Rech and figure1 of Herman) to form a ramp. As concerns claim 32, the combination shows. As concerns claim 36, the combination (Herman) shows the first ramp segments made of an elastomeric material (abstract) and as concerns claim 39, the combination (Herman) shows the first segments having opening for receiving fasteners to secure the segments (66, 68) or as concerns claim 32, the combination (Rech) shows the first ramp segments made of an elastomeric material (col. 1, lines 15-20) and as concerns claim 35, the combination (Rech) shows the first segments having opening for receiving fasteners to secure the segments (6, 7).

### ***Response to Arguments***

6. Applicant's arguments with respect to Rech and Herman have been considered but are moot in view of the new ground(s) of rejection. In response to applicant's arguments regarding Barnowski and Haskins, applicant is reminded that as the secondary references Barnowski and Haskins may not show all elements of the base claim (thus a 103 rejection) such as vehicular roadway under construction (which was newly amended to the claim) but instead provide motivation and obviousness. The test for obviousness is not whether the all features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed

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invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

7. In response to applicant's arguments regarding the affidavits that have now been considered; they are deemed not persuasive since the single piece ramp made by WAPC (not of record) and the Shaftner reference 5,308,188 are not being used in the rejection above. Although the affidavits provide reasons to modify the single piece ramp in terms of weight and slope; they do not preclude the motivation to make elements interlocking segments as clearly taught by Rech (noted above) or that the slope of 1:20 is well know, as demonstrated by Barnowski.

### ***Conclusion***

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

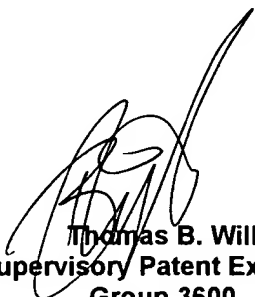
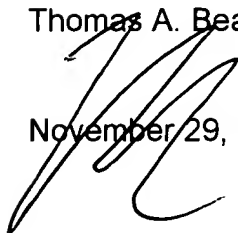
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas A Beach whose telephone number is 703.305.4848. The examiner can normally be reached on Monday-Thursday, 8:00am-6:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Will can be reached on 703.308.3870. The fax phone numbers for the organization where this application or proceeding is assigned are 703.872.9306 or 703.872.9306 for regular communications and 703.872.9306 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.306.4198.

Thomas A. Beach

November 29, 2004



Thomas B. Will  
Supervisory Patent Examiner  
Group 3600